IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6910 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HIRABEN J UPADHYAY

Versus

DISTRICT EDUCATION COMMITTEE

Appearance:

1. Special Civil Application No. 6910 of 1990

MR KS JHAVERI & Ms.M.J.Serrao for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

RULE SERVED for Respondent No. 2

MR KH BAXI for Respondent No. 3

MR BY MANKAD, AGP for Respondent No. 4

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 22/01/2002

ORAL JUDGEMENT

1. Hiraben Jadavji Upadhyay, petitioner has filed

this petition with a prayer to finalise the amount of pension of the petitioner, to consider the break in service from 17th June, 1978 to 21st September, 1978 as on duty period, to relax the upper age limit in case of the appointment of the petitioner and also to grant interest at the rate of 18% p.a. on pension amount of the petitioner. The said petition has been filed on 17th September, 1990. This Court issued notice and ultimately admitted the matter. Now the matter is placed for hearing before me today.

2. The facts giving rise to this petition are as under:-

2.1 Since 1963 to 1972 petitioner served in different schools under the Sarvoday Scheme. After doing PTC on 17th January, 1972, as per the order of District Education Committee, Bhavnagar, she has joined the services of District Education Committee, District Panchayat Office, Bhavnagar. From the record it appears that petitioner had joined the service on 17th January, 1972, at that time she was overage. However, from the record it appears that the authority has condoned the said aspect of overage by their communication dated 23rd October, 1990, which has been produced by the Government in this behalf.

2.2 It may be noted that in the year 1978 petitioner was transferred from Galiyadhar to Moti Vavadi, however, because of her domestic reasons petitioner did not resume and remained absent from 18.6.1978 to 21.9.1978 without any prior approval.

2.3 It may be noted that the petitioner has retired from service on 31.12.86. It appears that on 19.6.1978 the authority has relieved the petitioner and thereafter petitioner had entered into correspondence from 19.6.1978 to 20.9.78. However thereafter the authority had assured that they will try to solve the problem of the petitioner and thereafter petitioner again joined the duty on 21.9.78. This fact has been revealed by the petitioner's letter dated 13.11.1986 addressed to District Primary Education Officer in this behalf. Thereafter the authority passed the order dated 5.7.88 granting pension Rs.250/- p.m. and also gratuity of Rs.8000/- in this behalf.

2.4 The District Primary Education Officer addressed a letter dated 8.8.88 to the petitioner and directed to fill up the BTR Form in this behalf. The District Primary Education Officer by his communication dated

21.11.88 addressed a letter to the Taluka Development Officer stated that there was a break in service of the petitioner from 19.6.78 to 21.9.78 in which it has been stated that the authority has decided to condone the break in service. However, what is a break and what is the nature of break has not been stated in this behalf. The Taluka Development Officer by his letter dated 12.12.88 informed the petitioner that they have not received any basis to condone the break in service.

2.5 Thereafter petitioner addressed a notice dated 31.7.89 to the authority in this behalf. The petitioner has also stated that she has informed about the transfer to various authorities still the pension and gratuity amount has not been paid. She has also referred the letter dated 12.12.88 addressed by Taluka Development Officer in this behalf. The District Panchayat Committee by its letter dated 18.9.78 informed about the transfer of the petitioner to various authorities. She has stated that she has not received pension and gratuity in this behalf.

2.6 The authority has replied to the said notice on 28.8.89 in which they have stated that petitioner's service from 19.6.78 to 21.9.78 has not been considered as continuous service and no leave has been sanctioned for that period otherwise the authority has prepared the provisional pension and she was directed to collect the same however the petitioner refused to accept the same.

2.7 Being aggrieved and dissatisfied with the aforesaid as stated above, the petitioner has filed the present petition before this Court for the relief which has been mentioned earlier in this behalf.

3. It is a case of the petitioner that the respondent No.1 vide letter dated 11.4.1990 directed the Taluka Development Officer to consider the case of the petitioner as per the policy and to condone the break in service of the petitioner and also directed to relax the age limit of the petitioner.

4. Ms.M.J.Serrao, learned advocate appearing on behalf of Mr.K.S.Zhaveri, learned advocate for the petitioner submitted that the impugned action of not granting pension and gratuity by Taluka Development Officer respondent No.2 and not finalise the amount of pension for 4 years after retirement is illegal, unconstitutional and bad in law. It was a case of the petitioner that it was a policy of the respondent authority to condone such accidental break in service

while counting the length of pensionable service as provided in Rule 192 of the Bombay Civil Services Rules (hereinafter referred to as `the Rules').

4.1 It was submitted that the petitioner is denied the benefit of this statutory policy arbitrarily at the whim of the respondent No.2 who is even defying the direction of his superior authority though the petitioner is not given any special treatment or favour. The aforesaid action is thus violative of Articles 14 and 16 of the Constitution of India.

4.2 It was further submitted that petitioner being a widow and having no other source of income and in that case delay of 4 years in payment of pension involves peculiar hardship and amounts to economic death and therefore in violation of Rule 193-A of the Rules.

4.3 It is a case of the petitioner that respondent No.1 District Primary Education Officer directed the respondent No.2 Taluka Development Officer to condone the break in service and to relax the age limit of the petitioner, but the respondent No.2 neglected and disobeyed the direction of the respondent no.1 and thus with a view to harass the petitioner and by not fixing the pensionary benefit even after 4 years of her retirement.

5. On the other hand Mr.Baxi, learned advocate appeared on behalf of District Development Officer, Bhavnagar, Mr.Munshaw, learned advocate appeared on behalf of District Education Committee and Mr.B.Y.Mankad, learned AGP appeared on behalf of the State.

6. On behalf of respondent no.1, Smt.Kumudben M.Bhatt, Deputy District Primary Education Officer, Bhavnagar District Panchayat has filed affidavit dated 12.11.90 in which it has been stated that in the year 1978 the petitioner was transferred from Galiyadhar to Moti Vavadi, however at that place the petitioner did not resume and remained absent for a period of 96 days i.e. from 18.6.1978 to 21.9.1978. Therefore during this period the petitioner had remained absent without any authorised leave which is to be deducted from the period of pensionable service i.e. from 19.1.1972 to 31.12.1986, making the total pensionable services of 14 years and 11 months. It was stated that though amount is not sanctioned by local fund authority because of two objections which have not been cleared by the petitioner there is delay in making the payment.

7. Learned advocate for the respondent has relied upon the appointment letter dated 12th January, 1972, appointing petitioner and also the undertaking by the petitioner under Rule 214 of the BCSR Rules and also the order by the authority dated 5.7.88 granting minimum pension of Rs.250/- p.m. and gratuity Rs.8000/- in this behalf. However, it appears that, because the pension was considered after considering the break in service, the petitioner did not accept the same. It appears that regarding overage the authority had already condoned vide communication dated 23.10.90. However, regarding break in service still the authority maintained that there is break in service.

8. I have heard the learned advocates for the petitioner and the respondents in this behalf.

9. In view of the same, without expressing any opinion on the merits of the matter, I direct the petitioner to make representation to the District Primary Education Officer about her grievance to be ventilated whatever the points which has been urged in the petition over and above whatever other points she wants to urge in the representation. She will make the representation by 28th February, 2002, and after the representation is made the authority will decide the same within two months from such representation i.e. by 30th April, 2002. As the petitioner is a widow and she has to obtain pension regarding her service for which she has already served for 23 years, I hope and trust the authority will consider the representation kindly and sympathetically.

10. In view of the aforesaid observations and directions, the petition stands disposed of accordingly with no order as to costs. Rule is discharged.

(K.M. Mehta, J.)

syed/